Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Maritime Communications/Land Mobile LLC	)	File No. 0004417199
and Interstate Power and Light Company	)	Call Sign: WQGF316
Assignment of Authorization Application	)	
	)	
Maritime Communications/Land Mobile LLC	)	File Nos. 0004419431, 0004422320, and
and Wisconsin Power and Light Company	)	0004422329
Assignment of Authorization Applications	)	Call Signs: WQGF316 and WQGF317
	)	

To: Office of the Secretary

Attn: Wireless Telecommunications Bureau

Reply to Oppositions to Motion to Dismiss,
Motion for Sanctions Against Assignees,
and
Motion for Sanctions Against Assignee Legal Counsel

Petitioners hereby submit this reply to the MCLM opposition (the "Opposition" or "MCLM Opposition") and Alliant and Wiley Rein LLP ("Wiley") joint opposition (the "A&W Opposition") (together, the "Oppositions") to their Motion regarding the "waiver" request submitted with the Applications for the Licenses.

1. Introduction and General

This Reply references and incorporates the Reply to the Petition to Deny currently filed by Petitioners, to the extent said other Reply contains facts and arguments responsive to the subject Oppositions to the Motion to Dismiss (there is close relation between the Petition to Deny and the Motion to Dismiss).

This includes, without limitation, the part of said other Reply pertaining to the contest in *control* of MCLM in day-to-day including contract matters (Sandra and Donald Depriest solely, or John Reardon and Mobex, or some joint control, etc.) and lack of disclosure of *actual ownership* including controlling ownership (Mobex appears to have contributed the vast majority

of assets to capitalize MCLM and thus appear to be the actual controlling owners on fully diluted or other ultimate basis, etc.)—and these matters alone (in addition to the others raised) create a serious question as to the validity of the subject Applications.

Generally, the Oppositions of Alliant and MCLM are ineffective for not directly dealing with and refuting the principal facts and arguments in the Motion to Dismiss, and for distorting those facts and arguments.

The Oppositions confirm what Petitioners asserted in the Motion to Dismiss: Alliant and MCLM ask that the FCC launder defects in MCLM and its Licenses based (i) on Alliant's claims to public interest greater than anything Congress had in mind in creating Sections 308, 309, 312 and other parts of the Communications Act, and (ii) so MCLM can get paid money it may not deserve at all, if proceedings under Section 308 and 309 show that it and/or the subject License are defective. Alliant and its counsel are, by their actions, in the same camp as MCLM: they are co-conspirators to the MCLM unlawful actions subject of the "Section 308" and related "Section 309" proceedings. That is contrary to both the Communications Act, related FCC rules, the US criminal code (for reasons explained in the Petition to Deny and its referenced material) and US antitrust law.

2. Motion for Stay

If the Motion to Dismiss is not summarily granted, then, Rather than waivers being in lawful and in the public interest to submit and grant, a stay should be put into place on all licensing activity by MCLM of all its licenses, including the subject Applications in this proceeding.

Petitioners will be submitting a Motion to Stay for that purpose in the near future, but in addition the FCC may properly issue a stay on its own motion.

3. The Alliant Opposition Arguments
(The Applications and Waivers are Laundering Requests, which the Opposition Confirms

These are summarized below in numbered single-space text, followed by specific arguments in Reply. Also, Petitioners refer to and incorporate their responses given below to the MCLM Opposition and comments to the degree that Alliant supported the MCLM position or submitted similar arguments in its Opposition and comments.

1. Re: Waivers being declaratory ruling: that argument by Petitioners is without merit. Assignee is trying to ensure it may fully use the spectrum for its needs.

That is not an effective opposition. Assignee cannot, in the guise of "waivers" seek to waive requirements under FCC rules and the Communications Act in these circumstances where the Section 308 and Section 309 Proceedings deal with the qualifications of the Licensee Assignor, MCLM and the validity of the License underlying the Applications.

If the Motion to Dismiss is not summarily granted, then, Rather than waivers being in lawful and in the public interest to submit and grant, a stay should be put into place on all licensing activity by MCLM of all its licenses, including the subject Applications in this proceeding. Petitioners will be submitting a Motion to Stay for that purpose in the near future, but in addition the FCC may properly issue a stay on its own motion.

2. Not challenging FCC authority. Applications and Waivers were submitted to FCC. Assignee recognizes it must wait for FCC approval.

That is a spurious argument for reasons stated above and in the Motion for Stay. There is no authority, in the circumstance, to support "waivers" of the FCC Section 308 and 309 Proceedings (and related FCC rules and procedures) and the threshold licensee qualification and License validity matters in those proceedings.

Alliant is transparently asking to "launder" all said threshold questions and defects. That is challenging FCC policy and rules, and Congressional intent and mandates to the FCC in the Communications Act, against licensing contrary to sound public interest determinations.

3. No basis shown for imposing sanctions against Assignee. Havens cites to Form 601 instructions, but this is form 603. FCC instructions apply better to petition filed by Havens. PN cited by Petitioners re: FCC policy re: frivolous filings is not applicable. FCC policy is to reduce frivolous filing against applicants. The Applications are well supported and not interposed for delay so Petitioners request for sanctions against assignee have not merit.

Those arguments are ineffective, and actually challenge the FCC's Section 308 Proceeding as frivolous and the procedure and public interest requirements in Sections 308, 309(d)-(d) and 312 of the Communications Act. Alliant's arguments are thus both frivolous and an abuse of process, especially when made by experienced legal counsel. There is no magic about Alliant or it counsel that give it authority to sidestep the above-noted public-interest determinations in the subject Section 308 and 309 Proceedings.

4. Claim for sanctions against Wiley is baseless. Petitioners cite to Section 1.52, but overlook fact that Applications were not signed by Wiley. Thus, claim is moot.

That is evasive and incorrect. The Application shows that Wiley Rein ("Wiley") is representing Alliant in this matter, as the contact agent. The Applications have not been modified to delete Wiley. Alliant and Wiley can't have it both ways: where Wiley represents Alliant before the FCC in this matter, but ducks responsibility and liability for sanctionable actions for which it is the agent.

On the other hand, this renunciation of liability by Wiley suggests it has concern that the Applications including waiver requests are sanctionable.

In any case, Wiley does not appear in this proceeding directly or via Alliant as renouncing its representation of Alliant shown in the Applications under the contract information and asserted by Petitioners. That lack of renouncing this appearance should be taken as Wiley waiving any assertion that it does not represent Alliant and that it does not have authority and responsibility.

The Communications Act provides (underling added):

> SEC. 217. [47 U.S.C. 217] LIABILITY OF CARRIER FOR ACTS AND OMISSIONS OF AGENTS.
>
> In construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.

Said acts do not have to be acts where said "agent, or other person acting for" has signed a document. In a case, as here, where a law firm is listed as the contact for the Applicant, and in the circumstance noted above where Wiley has not renounced its representation of Alliant in this matter, then Wiley shares the liability with Alliant. The above section 217 necessarily means that if the carrier engages in acts for this it is liable via an "agent or other person acting" for it, then said agent of other person is also liable, under the FCC rule sections cited in the Motion to Dismiss, and under the US criminal code and antitrust law cited in, together, the Petition to Deny and Motion to Dismiss.

The FCC instructions to Form 603 show that a law firm representing the assignee is to be listed in the Contract information field as Alliant and Wiley in fact stated in the Applications (the instructions are here: http://wtbwww05.fcc.gov/HelpDoc/instr603.html#application):

> *Name of Contact Representative*
>
> The data entry fields in the Name of Contact Representative section identify the contact representative, if different from the assignee/transferee. This is usually the headquarters office of a large company, the law firm or other representative of the assignee/transferee, or the person or company that prepared or submitted the application on behalf of the assignee/transferee. If there is a question about the application, an FCC representative will communicate with the assignee/transferee's contact representative.

For reasons shown above, Wiley is liable with Alliant, and the acts of Wiles in representing Alliant in this matter are the acts of Alliant. *To effectively stop* abuses as in this Application proceeding, the FCC should include legal counsel (and other agents and

representatives) that act for the direct party involved, as sharing in sanctions for wrongdoing that is found (or on appeal of a final FCC decision, a court may uphold or make said determination). Petitions intend to pursue this based on the clear pattern shown by MCLM itself and that is unfortunately being adopted by companies that seek to buy spectrum from MCLM: use legal counsel to attempt unlawful action, and if caught, allege that they did not really understand and should not be held liable for the acts of its counsel of other agents (indeed, in MCLM there is a clear contest going on as to who owns it and who is an authorized officer).

4. The MCLM Opposition and Comments Arguments
(The Applications and Waivers are Laundering Requests, which the Opposition Confirms)

These are summarized below in numbered single space text, followed by Reply. Also, Petitioners refer to and incorporate their responses given above to the Alliant Opposition to the degree that MCLM supported the Alliant position or submitted similar arguments in its Opposition and comments.

However, MCLM attempts to speak for Alliant in some of its Opposition, but it has no legal authority to do so, and thus, those parts of the Opposition should be stricken or disregarded.

1. Petitioners don't show standing to file Motions. Don't show how grant of Waivers will damage Petitioners.

This is ineffective. Petitioners commenced by showing that they have a valid claim to the subject MCLM geographic License at issue in the Applications including as shown in the "Section 309 Proceeding" challenging the MCLM long form in Auction 61 and the Section 308 Proceeding that arose from said Section 309 Proceeding, and that they have pending valid challenges to the MCLM site-based AMTS station licensing that are also, directly and indirectly, involved. Since Petitioners have standing in those proceedings (as the FCC has found), they have standing in this proceeding as well (on that basis along, apart from the other basis shown). On the other hand, MCLM can take no action that is not subject to challenge due to the conflict

that has been demonstrates as to the real ownership and control in MCLM.

2. Motions are just a "second bit at the apple".

That is an incorrect. A motion is permitted under FCC practice, and stands on its own, and simply calling it "second bite" is not an effective opposition. Seconarily, that charge make no sense since even if the "second bite" is merged with the Petition to Deny, it was filed at the same time and MCLM had the same right and time frame to oppose, which it did.

3. Petitioners got *Suncom* wrong. *Suncom* does not apply to an applicant submitting an application to FCC, but applied to appeal of an FCC decision. No standing required to file an application or waiver with FCC.

Petitioners properly cited *SunCom* for the reasons it was actually cited, and which the FCC should consider for the procedural reasons explained. It is obvious that Article III standing in federal court actions is relevant to FCC licensing proceedings, including since the Communications Act, 47 USC §402, and related FCC rules allow for appeals to court of final decisions in FCC licensing matters, and if some aspects of FCC licensing matter decision (or an entire matter) cannot be appealed to court for lack of Article III standing, that bears upon standing in the FCC matter (as well as any court appeal thereof). Also, if a party has no standing to take a matter to court under Article III that is since it has no or insufficient lawful interest at risk, and in that case, it is doubtful if it has standing for seeking FCC action on the matter (and the FCC should not gratuitously deal with request from a party with insufficient lawful interest at issue).

4. Request by Alliant doesn't have to be to Enforcement, but can be made solely to WTB that is processing applications. Thus no violation of Section 1.44(c).

MCLM is not all Alliant and cannot speak for Alliant. But in addition, this ignores that fact that the WTB commenced the Section 308 Proceeding, and thereafter the Enforcement Bureau also took up the Section 308 Proceeding, and has independent law-enforcement authority to pursue it verses the licensing-authority of the WTB, and said law-enforcement authority may

result in findings and/or action to modify or revoke the subject MCLM Licenses.

Alliant could have, *but chose not to*, modify their "waiver" requests to limit them solely to requests for waiver of licensing rules (including technical operating rules). Left standing, the Alliant "waiver" requests are not simply license-rule waiver requests, but are a collateral attack that seeks to short circuit the Section 308 proceeding. MCLM (and Alliant) show nothing to refute this.

5. Denial of one element of waivers should not result in denial of applications. FCC regularly grants applications where it only partially granted waivers.

MCLM cannot speak for Alliant here either. But in addition, the Applications that submitted waiver request and did not present an alternative to grant of the Applications apart from granting the included waiver requests fails, if the waiver requests are not granted. Petitioners cited the relevant law and MCLM did not effectively refute this, nor can MCLM speak for Alliant. Again, Alliant could have but not modify the Application (or withdraw the Applications and refile) to provide for grant of the Applications if the waiver requests are not granted. Alliant is allowing this matter to stand, and the FCC must apply the applicable law.

6. Argument to preserve AMTS for maritime are hypocritical. Havens has sold AMTS to non-maritime entities. Petitioners don't refute the public interest showing by Alliant. Petitioners intend to use AMTS for HALO that involves non-maritime apps thus they cannot now protest other parties using AMTS for non-maritime uses.

MCLM is—again-- simply wrong and misleading here. It is easy to see that is by deliberate misrepresentation. (1) First, Havens has no AMTS.[1] (2) The companies he manages assigned, in each sale of AMTS, only part of their AMTS in any region in which it was sold, retaining sufficient spectrum for maritime service along all major waterways (both in quantity of

[1] And companies Havens manages are distinct and are not all one entity: the FCC made clear in rejecting the PSI-Mobex attempt to characterize the commonly-managed Havens companies as effectively the same, that they are not the same (in ownership, assets, business plans, legal decision making, etc.).

spectrum and proximity to the waterways),[2] (3) HALO is only one of several primary applications the Havens-managed companies pursue and HALO is for maritime and well as land (and air) high accuracy location.[3] (4) Petitioners did not assert that AMTS should be used solely for maritime, but that in areas of major navigable waterways, it should be maintained for its maritime priority purposes (not simply priority under 47 CFR § 80.123, but for substantial radio services to maritime traffic, with appropriate advanced technology and system architecture, and integrated with land (including rail) and other modes of transportation.

In addition, Petitioners did and do further hereby contest the asserted public interest claims of Alliant, including since it failed to show that AMTS should not be maintained primarily (as its first use in areas of major waterways) for maritime service, and it failed to demonstrate what it suggested—that without AMTS "homeland security" and other high-sounding things Alliant believes it is needed to achieve with radio spectrum, can be achieved only with AMTS. As Petitioners stated, the FCC and NTIA found that US power utilities failed

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[2] E.g, (1) in sale to NUSCO, only 1 of 2 MHz was assigned, (2) in sale to TRANSCO-VELCO, only Vermont was assigned, with no major waterway involved, and also it was only 1 of 2 MHz, (3) in sale to Avista, only 750 kHz of 2 MHz assigned in some areas, and half that in other areas, was sold, and none of that along a US coastline (and not much along a major inland waterway), and (4) in sale to Puget Sound Energy, only 1 to under half of that sold, of 2 to 1.375 MHz (left of the original 2 MHz) was assigned, and sellers maintained all 2 MHz along the Pacific Ocean to the west (Ocean-side) of the coastal mountain ranges. Thus, in all cases, the Havens-managed entities -- (that, as described often to the FCC including in filings dealing with MCLM, cooperate in their respective nationwide wireless plans for HALO and other Smart Transportation, Energy, and Environment systems etc.)—have maintained sufficient spectrum for their plans in which maritime service along major waterways has always been a stated essential goal. In addition, these Havens managed entities have reinvested all of the net proceeds of the sales in said high-public-interest wireless developments, and regularly raise additional funds for these developments as well. Unlike MCLM, they don't warehouse and sell FCC spectrum for personal enrichment or to pay of legal claims and other debt.

[3] MCLM has no clue what it is talking about here, any more than it shows any understanding of any serious wireless technology and application: its self-professed business is to hold (squat on-warehouse and sell off spectrum), and the undisputable facts (including, apparent to Alliant and Wiley) show it does that by "hook or crook" (see also the Petition for Forbearance discussed in the accompanying Reply concurrently filed today).

to show good use of FCC licensed spectrum they already had obtained, for free by not adopting modern technology and systems, and in other ways.

7. Waivers and Applications are not an admission of MCLM permanent discontinuance of maritime. No FCC rule on permanent discontinuance and no evidence warranting any action by FCC.

That is not an effective refutation of any major fact or argument of Petitioners. Also, again, MCLM cannot speak for Alliant as to its applications. See also the above-noted Petition for Forbearance on these matters.

8. No evidence presented of criminal conspiracy and no evidence that the Waivers involve false or misleading statements.

There is indeed evidence of this. This was presented in depth, and is being pursued in the Section 308 and Section 309 proceedings, and in other ways before FCC and other federal offices, along with actions in federal court (under certain private rights of action, antitrust savings, and other provisions of the Communications Act and other relevant law).

[Signature on next page.]

Respectfully,

Environmentel LLC (formerly known as AMTS Consortium LLC), by

[Filed electronically. Signature on file.]
Warren Havens, President

Verde Systems LLC (formerly known as Telesaurus VPC LLC), by

[Filed electronically. Signature on file.]
Warren Havens, President

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Date: January 18, 2011

Declaration

I, Warren Havens, as President of Petitioners, hereby declare under penalty of perjury that the foregoing Reply to Oppositions to Motion including all attachments was prepared pursuant to my direction and control and that all the factual statements and representations contained herein are true and correct.

/s/ Warren Havens
[Submitted Electronically. Signature on File.]
_____

Warren Havens

January 18, 2011

Certificate of Service

I, Warren C. Havens, certify that I have, on this 18th day of January 2011, caused to be served, by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing Reply to Oppositions to Motion, including any exhibits and attachments, unless otherwise noted, to the following:[4]

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[4] The mailed copy being placed into a USPS drop-box today may not be processed by the USPS until the next business day.

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